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Counsel for Kurt F. Gwynne, Chapter 11  
 Trustee for Nominal Defendant  
 QUINTUS CORPORATION

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

JAMES BRENNAN, on behalf of Nominal  
 Defendant QUINTUS CORPORATION,

Plaintiff,

v.

JOHN BURKE, ALAN K. ANDERSON,  
 SUSAN SALVESEN, PAUL H. BARTLETT,  
 ANDREW BUSEY, FREDERIC W.  
 HARMAN, WILLIAM HERMAN,  
 ALEXANDER ROSEN, ROBERT W. SHAW,  
 and JEANNE WOHLERS,

Defendants,

-and-

QUINTUS CORPORATION,

Nominal Defendant.

CASE NO.: C-01-0327 VRW

STIPULATION OF VOLUNTARY  
 DISMISSAL WITH PREJUDICE AND  
 ORDER THEREON

This Stipulation of Voluntary Dismissal With Prejudice (the "Stipulation") is made this  
5<sup>th</sup> day of December, 2006, by and among James Brennan (the "Plaintiff"), John Burke, Alan K.  
 Anderson, Susan Salvesen, Paul H. Bartlett, Andrew Busey, Frederic W. Harman, William Herman,  
 Alexander Rosen, Robert W. Shaw, and Jeanne Wohlers (collectively, the "Defendants"), and Kurt  
 F. Gwynne, Chapter 11 Trustee (the "Trustee") of Quintus Corporation (the "Nominal Defendant"),  
 and collectively with the Plaintiff, Defendants, and Trustee, the "Parties"), by and through their  
 undersigned counsel.

1 WHEREAS, on February 22, 2001, the Nominal Defendant filed a voluntary petition for relief  
 2 under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States  
 3 Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

4 WHEREAS, pursuant to Section 541(a)(1) of the Bankruptcy Code, all derivative actions  
 5 became property of the Nominal Defendant’s bankruptcy estate. See In re General Dev. Corp., 179  
 6 B.R. 335, 338 (S.D.Fla. 1995) (“A corporation’s filing for bankruptcy cuts off a shareholder’s ability  
 7 to bring a derivative claim. The commencement of a bankruptcy case creates an estate for the benefit  
 8 of creditors which encompasses ‘all legal or equitable interests of the debtor in property as of the  
 9 commencement of the case.’ 11 U.S.C. § 541(a)(1). The bankruptcy estate includes all legal claims  
 10 owned by corporate debtor, including derivative actions brought by shareholders. Matter of  
 11 Consolidated Bancshares, 785 F.2d 1249, 1253-54 (5th Cir. 1986); Mitchell Excavators, Inc. v.  
 12 Mitchell, 734 F.2d 129, 131 (2d Cir. 1984).”);

13 WHEREAS, only the Trustee has standing to pursue claims or actions, including derivative  
 14 actions, that are property of the Nominal Defendant’s bankruptcy estate. See General Dev. Corp.,  
 15 179 B.R. at 338-39 (“While normally the fiduciary obligation of officers, directors and shareholders  
 16 ‘is enforceable directly by the corporation or through a stockholder’s derivative action, it is, in the  
 17 event of bankruptcy of the corporation, enforceable by the trustee.’ Pepper v. Litton, 308 U.S. 295,  
 18 306-07, 60 S.Ct. 238, 245, 84 L.Ed. 281 (1939). Only the trustee, then, has standing to prosecute  
 19 derivative claims.”); Cohen v. Northwestern Growth Corp., 385 F.Supp.2d 935, 964 D.S.D. 2005)  
 20 (“Although Plaintiffs may normally have the ability to bring a derivative claim in certain situations,  
 21 a corporation’s filing for bankruptcy cuts off a shareholder’s ability to bring a derivative claim.  
 22 Only the bankruptcy trustee has standing to pursue a derivative claim.”) (citations omitted);

23 WHEREAS, on January 4, 2006, the Bankruptcy Court entered the Order (I) Approving  
 24 Disclosure Statement for the Joint Plan of Liquidation of the Chapter 11 Trustee and the Official  
 25 Committee of Equity Security Holders; (II) Establishing Voting and Vote Tabulation Procedures;  
 26 (III) Establishing Voting Deadline and Deadline for Objections to the Plan; (IV) Fixing Record Date  
 27 for Voting on the Plan; (V) Approving Plan Solicitation Package; and (VI) Scheduling Hearing to  
 28 Confirmation Plan;

WHEREAS, on March 2, 2006, the Trustee and the Official Committee of Equity Security Holders for Quintus Corporation filed the Modified First Amended Joint Plan of Liquidation of the Chapter 11 Trustee and the Official Committee of Equity Security Holders (Dated March 1, 2006) (the "Confirmed Plan");

WHEREAS, on March 6, 2006, the Bankruptcy Court entered the Findings of Fact and Conclusions of Law and Order Confirming the Modified First Amended Joint Plan of Liquidation of the Chapter 11 Trustee and the Official Committee of Equity Security Holders (Dated March 1, 2006) (the "Confirmation Order");

WHEREAS, Article 7.1.9(b) of the Confirmed Plan provides that the above-captioned derivative action filed nominally on behalf of the Nominal Defendant shall be dismissed on or before the date the Confirmed Plan becomes effective. See generally Seinfeld v. Allen, 2005 WL 1231644, at \*3-4 (S.D.N.Y. May 25, 2005) (derivative actions remain property of the reorganized debtor pursuant to its chapter 11 plan).

NOW, THEREFORE, the Parties hereby stipulate and agree, by and through their undersigned counsel, as follows:

1. The above-captioned action is dismissed with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure; and

2. Each party shall bear their own costs and fees.

Dated: November 22, 2006

SPECTOR ROSEMAN &  
KODROFF, P.C.  
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By:   
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Counsel for Plaintiff

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1 Dated: October 16, 2006

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4 Peri Nielsen

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6 PAUL H. BARTLETT, ANDREW BUSEY,  
7 FREDERIC W. HARMAN, WILLIAM  
8 HERMAN, ALEXANDER ROSEN,  
9 ROBERT W. SHAW, and JEANNE  
10 WOHLERS

11 Dated: October \_\_, 2006

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13 Sara B. Brody

Counsel for Defendant SUSAN SALVESEN

14 Dated: October \_\_, 2006

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18 Counsel for Defendant ALAN K.  
19 ANDERSON

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8 Dated: October 25, 2006

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12  
13 Dated: October 25, 2006

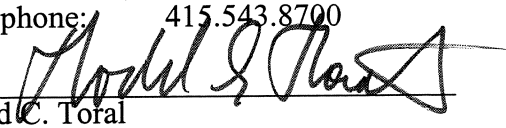
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By:   
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1 Dated: December 5, 2006


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By:   
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Counsel for Kurt F. Gwynne, Chapter 11  
Trustee for Nominal Defendant QUINTUS  
CORPORATION

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8 PURSUANT TO STIPULATION IT IS SO ORDERED.

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10 Dated: December 8, 2006

  
Vaughn R. Walker, Chief Judge  
United States District Court for the  
Northern District of California

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**PROOF OF SERVICE**


I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, Two Embarcadero Center, Ste. 2000, San Francisco, California 94111. On December 5, 2006, I served the following document(s) by the method indicated below:

**STIPULATION OF VOLUNTARY DISMISSAL WITH PREJUDICE AND ORDER THEREON**

- ☐ by transmitting via facsimile on this date from fax number 415.391.8269 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmitting fax machine complies with Cal.R.Ct 2003(3).
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- ☐ by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.
- ☐ by transmitting via email to the parties at the email addresses listed below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 5, 2006, at San Francisco, California.

  
 \_\_\_\_\_  
 Corinne Cadon

**SERVICE LIST**

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